



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-0190]

RIN 1625-AA00

Safety Zone; Crowley Barge 750-2, Bayou Casotte, Pascagoula,
MS

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the specified waters of Bayou Casotte, Pascagoula, Mississippi. This action is necessary for the protection of persons and vessels on navigable waters during the launch of the Crowley Barge 750-2, particularly small craft in the area that risk being swamped. Entry into, transiting or anchoring in this zone is prohibited to all vessels, mariners, and persons unless specifically authorized by the Captain of the Port (COTP) Mobile or a designated representative.

DATES: *Effective Date:* this rule is effective in the CFR from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until 11:59 p.m. April 30, 2012. This rule is effective

with actual notice for purposes of enforcement beginning 12:01 a.m. April 22, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2012-0190 and are available online by going to <http://www.regulations.gov>, inserting USCG-2012-0190 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and U.S. Coast Guard Sector Mobile (spw), Building 102, Brookley Complex South Broad Street Mobile, AL 36615, between 8:00 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail LT Lenell J. Carson, Coast Guard Sector Mobile, Waterways Division; telephone 251-441-5940 or e-mail Lenell.J.Carson@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to

authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because there is insufficient time to publish a NPRM. The Coast Guard received notification on March 28, 2012 of VT-Halter Pascagoula's intentions to launch the Crowley Barge 750-2 on April 22, 2012. Publishing a NPRM is impracticable because it would unnecessarily delay the required safety zone's effective date. The safety zone is needed to protect persons and vessels from safety hazards associated with the launching of the Crowley Barge 750-2. Additionally, delaying the safety zone for the NPRM process would unnecessarily interfere with launching the barge and its possible commercial and contractual obligations.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. The Coast Guard received notification on March 28, 2012 of VT-Halter Pascagoula's intentions to launch the Crowley Barge 750-2 on April 22, 2012. This rule is temporary and will

only be enforced for a short duration while the vessel is being launched. Delaying the effective date would be impracticable because immediate action is needed to protect persons and vessels from safety hazards associated with the launching of the Crowley Barge 750-2. Additionally, delaying the safety zone for the NPRM process would unnecessarily interfere with launching the barge and its possible commercial and contractual obligations.

Basis and Purpose

VT-Halter Pascagoula is a ship yard and repair facility located on Bayou Casotte in Pascagoula, Mississippi. The launching of vessels from this facility creates a 3' launch wave that will propagate eastward across the north turning basin of Bayou Casotte Harbor. This wave poses significant safety hazards to vessels, particularly small craft in the area that could potentially be swamped. The Pascagoula Port Authority will clear all vessels from berths north of their public terminal warehouse G and H due to the hazards associated with this wave. The COTP Mobile is establishing a temporary safety zone for a portion of Bayou Casotte, Pascagoula, Mississippi to protect persons and vessels on navigable waters during the launching of the Crowley Barge 750-2.

The COTP anticipates minimal impact on vessel traffic due to this regulation. However, this safety zone is deemed

necessary for the protection of life and property within the COTP Mobile zone.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone for a portion of Bayou Casotte, to include all waters between a southern boundary represented by positions, 30° 20' 42.3" N, 088° 30' 26.0" W and 30° 20' 42.3" N, 088° 30' 33.0" W and a northern boundary represented by positions, 30° 21' 06.85" N, 088° 30' 29.36" W and 30° 21' 09.15" N, 088° 30' 24.56" W. This temporary rule will protect the safety of life and property in this area. Entry into, transiting or anchoring in this zone is prohibited to all vessels, mariners, and persons unless specifically authorized by the COTP Mobile or a designated representative. The COTP may be contacted by telephone at 251-441-5976.

The COTP Mobile or a designated representative will inform the public through broadcast notice to mariners of changes in the effective period for the safety zone. This rule is effective from 12:01 a.m. April 22, 2012 through 11:59 p.m. April 30, 2012. Exact enforcement date and times will be broadcasted via a Safety Broadcast Notice to Mariners.

Regulatory Analyses

We developed this rule after considering numerous

statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review:

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that those Orders.

The temporary safety zone listed in this rule will restrict vessel traffic from entering, transiting, or anchoring within a small portion of Bayou Casotte Harbor, Pascagoula, Mississippi. The effect of this regulation will not be significant for several reasons: 1) this rule will only affect vessel traffic for a short duration; 2) vessels may request permission from the COTP to transit through the safety zone; and 3) the impacts on routine navigation are expected to be minimal. Notifications to the marine community will be published in the local notice to mariners and a broadcast notice to mariners. These notifications will allow the public to plan operations around the affected

area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the affected portions of Bayou Casotte Harbor, Pascagoula, Mississippi. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The zone is limited in size, is of short duration and vessel traffic may request permission from the COTP Mobile or a designated representative to enter or transit through the zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we

offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or

risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities

unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule involves safety for the public and environment and is not expected to result in any significant adverse environmental impact as described in NEPA. An environmental analysis checklist and a categorical exclusion determination

will be made available as directed under the ADDRESSES section.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T08-0190 to read as follows:

§ 165.T08-0190 Safety Zone; Bayou Casotte; Pascagoula, MS.

(a) Location. The following area is a temporary safety zone: a portion of Bayou Casotte, to include all waters between a southern boundary represented by positions, 30° 20' 42.3" N, 088° 30' 26.0" W and 30° 20' 42.3" N, 088° 30' 33.0" W and a northern boundary represented by positions, 30° 21' 06.85" N, 088° 30' 29.36" W and 30° 21' 09.15" N, 088° 30' 24.56" W.

(b) Enforcement. This rule will be effective from 12:01 a.m. April 22, 2012 through 11:59 p.m. April 30, 2012. Exact enforcement date and times will be broadcasted via a Safety Broadcast Notice to Mariners.

(c) Regulations. (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Mobile or a designated representative.

(2) Persons or vessels desiring to enter into or passage through the zone must request permission from the Captain of the Port Mobile or a designated representative. They may be contacted on VHF-FM channels 16 or by telephone at 251-441-5976.

(3) If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or designated representative.

(d) Informational broadcasts. The Captain of the Port or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

Dated: April 4, 2012

D. J. ROSE,
Captain, U.S. Coast Guard
Captain of the Port Mobile

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Date: 04/26/2012]